

(2011) 10 AHC CK 0051

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 58289 of 2011

Deputy General Manager, Bhartiya Door Sanchar Nigam Ltd. APPELLANT

Vs

Ram Kumar Sharma and Others RESPONDENT

Date of Decision : 17-10-2011

Acts Referred:

Evidence Act, 1872 — Section 22E

Legal Services Authorities Act, 1987 — Section 22A, 22B, 22C, 22D

Telegraph Act, 1885 — Section 7B

Citation : (2011) 10 ADJ 837

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon'ble Sudhir Agarwal, J.—Heard Sri K.N. Mishra, learned counsel for the petitioner and perused the record.

2. The writ petition is directed against order dated 30th August, 2011 passed by Permanent Lok Adalat, Aligarh holding petitioner liable for payment of damages to the tune of Rs. 5,000/- besides expenses to respondent No. 1.

3. The facts in brief given rise to the present dispute are as under:

4. The respondent No. 1 booked a telegram on 17th June, 2011 at Lucknow to transmit a message to Senior Treasury Officer, Aligarh for extension of his earned leave from 18th June, 2011 to 28th June, 2011. The said telegram was not delivered till 14th July, 2011 as a result whereof respondent No. 1 suffered deduction of salary for the period of absence and therefore he claimed damages/compensation.

5. The defence taken by petitioner is that telegram which was received at Aligarh, was illegible and therefore was returned to Lucknow. The Central Telegraph office was also informed of the situation. Thereafter on 9th July, 2011 the matter was examined and technical fault in the system was rectified where

after telegram was obtained in legible condition and handed over to one Sri Jabar Singh (T.M.) for distribution. However, he could not distribute the same being second Saturday and Sunday and thereafter from 11th to 13th July, 2011 he was absent due to illness. He could distribute the telegram on and after 14th July, 2011 after rejoining service.

6. It is contended that Indian Telegraph Act, 1885 (hereinafter referred to as "Act 1885") is a special Act and if there is any deficiency on account of system failure, no compensation is payable unless it is shown that there is negligence of departmental officials. He also contended further that in view of Section 7B of Act 1885, dispute could have been referred to Arbitration, and, Permanent Lok Adalat had no jurisdiction in the matter. Reliance is placed on Apex Court's decision in Civil Appeal No. 7687/04 decided on 1st September, 2009 (General Manager, Telecom v. M. Krishnan and another) wherein Apex Court held that in view of remedy provided u/s 7-B of Indian Telegraph Act, the remedy under Consumer Protection Act by implication is barred. Indian Telegraph Act is special Act and Legal Services Authorities Act, 1987 is general Act as such special law overrides general law. Relying thereon it is contended that Permanent Lok Adalat had no jurisdiction to adjudicate regarding compensation. In this regard reliance is also placed on Apex Court's decision in Chairman, Thiruvalluvar Transport Corporation Vs. Consumer Protection Council, . It is thus contended that the impugned order is wholly without jurisdiction.

7. However, I find no force in the submission.

8. So far as applicability of Section 7B of Act 1885 is concerned, I do not find that the same has any application in a case like the present one.

9. Section 7B of Act 1885 reads as under:

Arbitration of disputes.--(1) Except as otherwise expressly provided in this Act, if any dispute concerning any telegraph line, appliance or apparatus arises between the telegraph authority and the person for whose benefit the line, appliance or apparatus is, or has been provided, the dispute shall be - determined by arbitration and shall, for the purposes of such determination, be referred to an arbitrator appointed by the Central Government either specially for the determination of that dispute or generally for the determination of disputes under this section.

(2) The award of the arbitrator appointed under sub-section (1) shall be conclusive between the parties to the dispute and shall not be questioned in any Court.

10. Here is not a case raising a dispute relating to telephone bills. Whenever an adjudicatory forum is provided in a statute, which is a Special Act, scope of adjudicatory power under such special Act will confine to the provision concerned and shall not be stretched to the cases which are not apparently covered thereby.

11. In the case in hand petitioner's services were availed by an individual but

the petitioner committed default in rendering such service. It could not render service in the manner it was expected. The sufferer therefore has come up for claiming damages on account of failure on the part of petitioner to serve the individual concerned against payment it had received for rendering a particular service. Such matter apparently would not fall within the scope of Section 7B of Act 1885 and therefore it cannot be said that decision of Apex Court in General Manager, Telecom (supra) would be applicable to the case in hand.

12. Coming to the question whether the matter in question would be within the ambit of Permanent Lok Adalat, it would be appropriate to have a bird eye view of the provisions of the relevant statute. The Legal Services Authorities Act, 1987 (hereinafter referred to as "Act 1987") was enacted with an object to secure operation of legal system and promoting justice on the basis of equal opportunity. Section 22B talks of establishment of Permanent Lok Adalats for exercising such jurisdiction in respect of one or more "public utility services" and for such areas as may be specified in the notification. The term "Public Utility Service" has been explained in Section 22A(b) of Act 1987 and reads as under:

public utility service" means any-

- (i) transport service for the carriage of passengers or goods by air, road or water; or
- (ii) postal, telegraph or telephone service; or
- (iii) supply of power, light or water to the public by any establishment; or
- (iv) system of public conservancy or sanitation; or
- (v) service in hospital or dispensary; or
- (vi) insurance service.

and includes any service which the Central Government or the State Government, as the case may be, may, in the public interest, by notification, declare to be a public utility service for the purpose of this chapter.

13. It clearly includes postal, telegraph and telephone service. Therefore, the petitioner is a service covered by the term "Public Utility Service" u/s 22A(b) of Act 1987 and therefore Permanent Lok Adalat created u/s 22B of Act 1987 would have jurisdiction thereupon.

14. It is not the case of the petitioner that in the notification issued by the competent authority creating Permanent Lok Adalat there is no mention of postal, telegraph or telephone service or that the petitioner's public utility service is excluded therein. On this aspect in fact there is no challenge or no averment in the entire writ petition. The only challenge is vis-a-vis Section 7B of Act 1885 and Legal Services Authorities Act, 1987. In view of specific inclusion of petitioner as "public utility service" u/s 22A(b) of Act 1987 in respect where to a Permanent Lok Adalat can be established u/s 22B of Act 1987, it cannot be said

that jurisdiction can be excluded. A dispute can be raised before Permanent Lok Adalat provided the parties had not already taken up their matter before any Court. Making observation in the context of the provisions of Permanent Lok Adalat in Act 1987, the Apex Court in para 16 of the judgment in Inter Globe Aviation Ltd. (supra) said:

But in this case, the Respondent did not approach a "Court". The claim was filed by the Respondent before a Permanent Lok Adalat constituted under Chapter VI-A of the Legal Services Authorities Act, 1987 ("LSA Act" for short). Section 22C provides that any party to a dispute may, before the dispute is brought before any Court, make an application to the Permanent Lok Adalat for settlement of the dispute. When the statement, additional statements, replies etc., are filed in an application filed before it, the Permanent Lok Adalat is required to conduct conciliation proceedings between the parties, taking into account, the circumstances of the dispute and assist the parties in their attempt to reach an amicable settlement of the dispute. If the parties fail to reach an agreement, the Permanent Lok Adalat is required to decide the dispute. The Permanent Lok Adalats are authorized to deal with and decide only disputes relating to service rendered by notified public utility services provided the value does not exceed Rupees Ten Lakhs and the dispute does not relate to a non-compoundable offence. Section 22D provides that the Permanent Lok Adalat shall, while conducting the conciliation proceedings or deciding a dispute on merit under the LSA Act, be guided by the principles of natural justice, objectivity, fair play, equity and other principles of justice and shall not be bound by the Code of Civil Procedure, 1908 and the Indian Evidence Act, 1872. Section 22E provides that every award of the Permanent Lok Adalat shall be final and binding on the parties and could be transmitted to a civil Court having local jurisdiction for execution. Each and every provision of Chapter VIA of LSA Act emphasizes that is the Permanent Lok Adalat is a Special Tribunal which is not a "Court". As noted above, Section 22C of the LSA Act provides for an application to the Permanent Lok Adalat in regard to a dispute before the dispute is brought before any Court and that after an application is made to the Permanent Lok Adalat, no party to the application shall invoke the jurisdiction of any Court in the same dispute, thereby making it clear that Permanent Lok Adalat is distinct and different from a Court. The nature of proceedings before the Permanent Lok Adalat is initially a conciliation which is non-adjudicatory in nature. Only if the parties fail to reach an agreement by conciliation, the Permanent Lok Adalat mutates into an adjudicatory body, by deciding the dispute. In short the procedure adopted by Permanent Lok Adalats is what is popularly known as "CON-ARB" (that is "conciliation cum arbitration") in United States, where the parties can approach a neutral third party or authority for conciliation and if the conciliation fails, authorize such neutral third party or authority to decide the dispute itself, such decision being final and binding. The concept of "CON-ARB" before a Permanent Lok Adalat is completely different from the concept of judicial adjudication by Courts governed by the Code of Civil Procedure.

15. In United India Insurance Co. Ltd. Vs. Ajay Sinha and Another, the role of Permanent Lok Adalat has been described by the Court as borne out from a reading of the various provision in Chapter VIA of Act 1987 as under:

26. Here, however, the Permanent Lok Adalat does not simply adopt the role of an Arbitrator whose award could be the subject matter of challenge but the role of an adjudicator. The Parliament has given the authority to the Permanent Lok Adalat to decide the matter. It has an adjudicating role to play.

16. Since in the present case learned counsel for the petitioner has not advanced any other submission except the issue that in view of Section 7B of Act 1885, Permanent Lok Adalat had no jurisdiction in the matter which has already discussed above, I am of the view that the order impugned warrants no interference. The writ petition, in the circumstances, deserve to be dismissed in limine.

17. Dismissed accordingly.